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The Honorable Sean O'Donnell
KING COUNTY
Noted for Consideration: November 13, 2015
SUPERIOR COURT CLERK
Hearing Time: 10 a.m.
CASE NUMBER: 14-2-07669-0 SEA
ORAL ARGUMENT REQUESTED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

MOVE, INC., a Delaware corporation,
REALSELECT, INC., a Delaware
corporation, TOP PRODUCER SYSTEMS
COMPANY, a British Columbia
unlimited liability company, NATIONAL
ASSOCIATION OF REALTORS®, an
Illinois non-profit corporation, and
REALTORS® INFORMATION
NETWORK, INC., an Illinois corporation,

Plaintiffs,

vs.

ZILLOW, INC., a Washington
corporation, ERROL SAMUELSON, an
individual, and CURTIS BEARDSLEY, an
individual, and DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

**MOTION OF NATIONAL
ASSOCIATION OF REALTORS AND
REALTORS INFORMATION
NETWORK, INC. TO DISMISS
ZILLOW'S COUNTERCLAIMS**

CR 12(b)(6)

Contains OCEO Materials

FILED UNDER SEAL PER COURT
ORDER DATED: _____

1 INTRODUCTION

2 Zillow engaged in a public relations campaign denigrating the National
3 Association of Realtors' claims against defendants Zillow, Errol Samuelson, and Curt
4 Beardsley. To Zillow's chagrin, a former Zillow Vice-President wrote the
5 Whistleblower Letter, revealing his knowledge that the plaintiffs' claims in this case are
6 true. He confirmed his allegations under oath at his deposition, despite Zillow's
7 repeated threats against him. At that point, a quality company would have objectively
8 investigated the allegations and disciplined any wrongdoers. Instead, Zillow doubled
9 down on its misconduct. To further bully plaintiffs National Association of Realtors
10 and its Realtors Information Network, Inc. subsidiary (together, "NAR"), and
11 intimidate potential future whistleblowers who might reveal the truth about what is
12 happening at Zillow, Zillow filed frivolous counterclaims based entirely on
13 communications about key evidence of Zillow's unlawful conduct. Zillow's
14 counterclaims merely perpetuate the charade that allegations of unlawful conduct in the
15 Whistleblower Letter somehow are both false *and also* reveal Zillow's proprietary
16 business methods and trade secrets.

17 Zillow seeks to pursue these "attenuated" claims to harass NAR with an
18 intrusive sideshow of depositions and document demands concerning the
19 dissemination of the Whistleblower Letter, which Zillow itself has now publicly filed in
20 open court. The burden on NAR, a nonprofit trade association, will likely be
21 substantial. It also will be wholly unjustified. And merely allowing these frivolous
22 counterclaims to proceed against NAR may, as Zillow intends, intimidate NAR's
23 volunteer leadership and member real estate brokers and agents from participating in
24 this case, and scare other potential whistleblowers from stepping forward with more
25 evidence of Zillow's broad misconduct.

26 As set forth below, Zillow's counterclaims all are without merit. *First*, the claims
27 are barred by the absolute litigation privilege and fair and true report privilege because

1 they are based on statements filed in a judicial proceeding which clearly have some
2 relation to the case. *Second*, Zillow’s trade secret claims fail because the letter plainly
3 does not reveal any of supposed trade secrets described in Zillow’s counterclaim, and
4 Zillow’s conduct generally described in the letter is either unlawful activity or
5 obviously public information, neither of which can be protected as a trade secret. *Third*,
6 Zillow’s defamation claims fail because they are based on statements and implications
7 that do not appear anywhere in the letter. *Fourth*, Zillow’s abuse of process claim fails
8 because it does not allege that NAR filed the Whistleblower Letter to extort Zillow or
9 compel it do something it is not legally required to do. *Fifth*, Zillow’s contractual
10 interference claims fail because there are no allegations that NAR did anything to
11 induce the whistleblower or anyone else to breach a contract with Zillow. *Sixth*,
12 Zillow’s claim that NAR breached a protective order is baseless because it is well-settled
13 that a purported breach of a court order does not give rise to a breach of contract claim
14 and because the Whistleblower Letter in any event is not subject to the protective order
15 in this case. Accordingly, NAR respectfully requests that the Court dismiss all
16 counterclaims asserted against it pursuant to CR 12(b)(6).

17 STATEMENT OF FACTS

18 **A. National Association of Realtors Sues Defendants.**

19 NAR is America’s largest nonprofit trade association, representing more than 1.1
20 million residential and commercial real estate professionals (known as “Realtors,”
21 which is a registered trademark of NAR), as well as NAR’s institutes, societies, and
22 councils, involved in all aspects of the residential and commercial real estate industries.
23 NAR provides a facility for professional development, research, and exchange of
24 information among its members and to the public and government for the purpose of
25 preserving the free enterprise system and the right to own real property.¹ NAR, along
26

27 ¹ See www.realtor.org/about-nar.

1 with co-plaintiff and business partner Move, Inc. are suing Zillow, Errol Samuelson and
2 Curt Beardsley for trade secret misappropriation (and other unlawful conduct) arising
3 from the defection of the two high-level executives from Move to Zillow.

4 **B. A Whistleblower Comes Forward With Serious Allegations.**

5 As the Court is aware, on April 10, 2015, an anonymous letter from a
6 whistleblower (the “Whistleblower Letter”) arrived at the offices of plaintiffs’ counsel.
7 See Appendix 1 (attached).² The Letter, which came out of the blue, appeared to have
8 been written by a knowledgeable current or former Zillow employee concerned about
9 illegal activity he had witnessed at Zillow. *Id.* The Letter appeared to confirm the
10 plaintiffs’ worst fears: it alleged that Curt Beardsley and Errol Samuelson had stolen
11 trade-secret data from Move and that Zillow was using that stolen data to unfairly
12 compete with plaintiffs. *Id.* The whistleblower –who was later revealed to be former
13 Zillow Vice President Chris Crocker – also described specific, illegal ways in which
14 defendants carried out their “assault on [Move’s] ListHub” in violation of the
15 preliminary injunction in this case. *Id.*

16 What the Whistleblower Letter did not do, however, was provide any *details*
17 about the activities it alleged Zillow was engaging in. Rather, the Letter provided a
18 roadmap – suggesting places to look and people to talk to about Zillow’s unlawful
19 conduct. For example, the Letter alleged that Zillow had launched “secret programs”
20 that involved illegally scraping plaintiffs’ Realtor.com websites for customer lists and
21 other data using an offshore service to avoid detection. See Appendix 1, p. 2. The Letter

22 ² Because Zillow’s counterclaims are expressly based on the Whistleblower Letter – *e.g.*,
23 Counterclaim ¶¶ 5-52 – the Court properly may consider the Letter’s contents in deciding a
24 motion to dismiss, without converting the motion into one for summary judgment. See *Trujillo*
25 *v. Northwest Tr. Servs., Inc.*, 2015 WL 4943982, at *8 (Wash. Aug. 20, 2015) (“[d]ocuments whose
26 contents are alleged in a complaint but which are not physically attached to the pleading may ...
27 be considered in ruling on a CR 12(b)(6) motion to dismiss”); see also *Jackson v. Quality Loan Serv.*
Corp., 186 Wn. App. 838, 844-45 (2015); *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726 (2008).
Without the incorporation-by reference doctrine, a party “could evade dismissal under Rule
12(b)(6) simply by failing to attach to his complaint a document that proved his claim had no
merit.” *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002).

1 referred to the programs' apparent code names – LSS and LSSv2 – but did not discuss
2 any specifics of the programs.

3 **C. Plaintiffs File The Letter With The Court, And Zillow Panics.**

4 When the Whistleblower Letter arrived, plaintiffs had a motion pending before
5 the Court to revise an order by the Special Master severely curtailing discovery into
6 Zillow's unlawful conduct. The plaintiffs filed the Letter with the Court because it
7 illustrated the importance of third-party discovery, since it showed that defendants
8 were still hiding evidence and evading the judicial system, while broadly proclaiming
9 the allegations against it were false.³

10 Because the Letter was not produced in discovery by Zillow or any party (there
11 was no document subpoena to the author of the letter), it was not subject to the
12 protective order. Moreover, the Letter contained allegations of unlawful conduct and a
13 continuing cover-up – actions that could never qualify as trade secrets. And, while the
14 Letter provided a roadmap, pointing out where to look for evidence of improper
15 conduct, it did not disclose the specifics of any legal business practice of Zillow's. *See*
16 *Appendix 1.*

17 **D. Zillow Misleads The Court Into Sealing The Letter On An Emergency Basis.**

18 Rather than deny the allegations in the Letter, however, Zillow raced into this
19 Court to obtain an emergency order sealing the Letter on the ground that the illegal
20 activities identified in the Letter were somehow Zillow's proprietary trade secrets.
21 Zillow demanded that the last three paragraphs of the Letter, which described its illegal
22 conduct, be immediately sealed. Zillow represented that these activities – i.e., illegally
23 scraping Plaintiffs' website and stealing data – were its "proprietary systems" and
24

25 ³ As the Court is aware, it has now become clear that Zillow's herculean efforts to hide its
26 misconduct also included systematic efforts by its employees to destroy evidence – including
27 the destruction of half a dozen electronic devices and the execution of file deletion programs
across multiple computers.

1 “strategies ... to ensure quality listings on its website.” *See* 4/13/15 Zillow Mtn. to Seal
2 at 2. Zillow further told the Court that public disclosure of this information “will cause
3 significant competitive harm to Zillow.” *Id.*

4 The Court rejected most of Zillow’s arguments. But it did seal seven sentences
5 on an interim basis, accepting Zillow’s representations that the sentences revealed
6 Zillow’s proprietary information. Specifically, the Court held that the sentences
7 describing Zillow’s data scraping and data theft “reveal Zillow’s confidential strategies
8 to ensure quality listing data on its website.” *See* 4/14/15 Order at 2. And it held that
9 the sentences describing Zillow’s efforts to circumvent ListHub and build a competing
10 platform “contain[] information about Zillow’s strategy to compete with Move, Inc.” *Id.*

11 This Court’s emergency order stated that the parties could re-raise the sealing
12 issues with Judge Chun, which both parties did shortly before Judge Chun recused
13 himself. In a declaration filed in support of the plaintiffs’ motion to unseal the letter,
14 Chris Crocker, a former Zillow Vice President, revealed himself to be the whistleblower,
15 confirmed the veracity of the Letter, and explained that he sent it anonymously because
16 he feared retaliation by Zillow. Zillow again argued that the Letter disclosed its
17 proprietary “secret programs” and contended that if the Letter were not sealed, Zillow’s
18 competitors could misappropriate Zillow’s secrets and create their own identical
19 programs. *See* 4/24/15 Zillow Opp. to Mtn. to Unseal at 1, 7-8; *see also* 4/24/15 Beitel
20 Decl. ¶ 7.

21 On May 12, Judge Chun issued an order partially granting and partially denying
22 both motions. He unsealed one sentence because the information in it regarding
23 Zillow’s use of Tableau software – which Zillow told this Court at a hearing was a trade
24 secret – was actually publicly available information. *See* 5/12/15 Order Re: Crocker
25 Letter at 1-2; *see also* 4/20/15 Singer Declaration ISO Mtn. to Unseal, Ex. 21.

26 As it turned out, however, Zillow’s trade secret arguments were a complete
27 sham. On May 14, with its emergency sealing orders safely in hand, Zillow reversed

1 course, abruptly changing its story. Zillow served an interrogatory response that *denied*
2 the activities described in the Whistleblower Letter were *any part* of its proprietary,
3 trade-secret programs. Specifically, Zillow denied engaging in the precise activities that
4 it now claims are the trade secrets that the Whistleblower Letter supposedly revealed.
5 *See* Appendix 2.

6 **E. Zillow Abandons Its Efforts To Seal The Whistleblower Letter.**

7
8 When plaintiffs challenged Zillow’s self-contradictory position and sought to
9 have the Whistleblower Letter unsealed, Zillow ultimately backed down. On June 3
10 and 4, 2015 – on the eve of a hearing at which the Court could have ruled on the merits
11 of Zillow’s trade-secret assertions – Zillow itself suddenly filed the Whistleblower
12 Letter as an exhibit in the public court file, without any redactions, and represented to
13 the Court that the purportedly “confidential and trade secret information” contained in
14 the Whistleblower Letter had lost its economic value and that there was “no longer a
15 credible argument to be made” for sealing any part of the Letter. *See* 6/3/15 Zillow
16 Response To Motion For an Order Permitting Limited Intervention By Allied Daily
17 Newspapers, et al., at 5; *see also* 6/3/15 Zillow Response to Mtn. to Seal (Gallegos Decl.)
18 at 11-12; *see also* 6/3/15 McMillan Decl. ISO Zillow’s Opp. to Plaintiff’s Mtn. to Revise
19 SM Order, Ex. F.

20 **AUTHORITY AND EVIDENCE RELIED UPON**

21 Even if all allegations underlying Zillow’s counterclaims are accepted as true and
22 Zillow’s pleadings are construed in its favor, Zillow still has not stated any claim upon
23 which relief can be granted. Accordingly, the Court should dismiss all counterclaims as
24 to NAR pursuant to Pursuant to CR 12(b)(6).

25 **A. The Absolute Litigation Privilege Bars Five Of Zillow’s Claims.**

26 Under Washington law, the litigation privilege provides absolute protection
27 against liability – under any theory – that is based on written or spoken statements

1 made by a party or counsel in the course of a judicial proceeding. *See McNeal v. Allen*,
2 95 Wn.2d 265, 267 (1980). “The principal purpose of [the litigation privilege] is to afford
3 litigants and witnesses the utmost freedom of access to the courts without fear of being
4 harassed subsequently by derivative tort actions.” *Wynn v. Earin*, 163 Wn.2d 361, 376
5 (2008) (quoting *Silberg v. Anderson*, 50 Cal. 3d 205, 213-14 (1990)). For the privilege to
6 apply, the statement or submission in question need only have “some relation” to the
7 subject matter of the litigation. *E.g., Demopolis v. Peoples Nat'l Bank of Wash.*, 59 Wn.
8 App. 105, 110 (1990).

9 **1. The Litigation Privilege Forecloses Five Of The Claims Because**
10 **They Are Based On Filing The Letter With The Court.**

11 Zillow’s defamation, abuse of process, aiding and abetting, interference, and
12 trade secrets claims all are based on the filing of the Whistleblower Letter or statements
13 made to the Court regarding the Letter and therefore cannot succeed. The litigation
14 privilege provides an absolute shield against such claims. *See, e.g., Jeckle v. Crotty*, 120
15 Wn. App. 374, 386 (2004) (affirming dismissal of claims for interference with business
16 relationships, outrage, infliction of emotional distress, and civil conspiracy for conduct
17 pertinent to various lawsuits because litigation privilege provided absolute immunity);
18 *Dexter v. Spokane County Health Dist.*, 76 Wn. App. 372, 376 (1994) (“[a]ll witnesses are
19 immune from all claims arising out of all testimony”).⁴

20 Clearly worried about litigation privilege, Zillow asserts that the Letter was not
21 relevant to the “pending discovery motion” with which it was filed because the Court
22 elected not to consider it. *See Counterclaim ¶ 11.*⁵ But that is not the test. To fall

23 ⁴ *See also Bruce v. Byrne-Stevens & Assocs. Engineers, Inc.*, 113 Wn.2d 123, 132 (1989) (litigation
24 privilege not limited to defamation claims); *In re Microbilt Corp.*, 588 F. App’x 179, 180 (3d Cir.
25 2014) (applying Florida law and holding that litigation privilege precluded a trade secrets claim
based on filing documents in the public court file).

26 ⁵ Notably, the Court did *not* find that the Letter had no relation to the pending motions. One of
27 the main factors in deciding the scope of discovery from third parties is whether information
can be obtained from a party more directly. *Arista Records LLC v. Lime Grp. LLC*, 2011 WL
679490, at *2 (W.D. Wash. Feb. 9, 2011). Because the Letter confirmed the plaintiffs’ concerns

1 outside the litigation privilege, a statement in a court document must have “no
2 connection whatever with the litigation.” *Demopolis*, 59 Wn. App. at 110. For purposes
3 of the litigation privilege, “[a] statement is pertinent if it has *some relation* to the judicial
4 proceedings in which it was used, and has *any bearing* upon the subject matter of the
5 litigation.” *Id.* (emphases added); accord *Southcenter Joint Venture v. Nat’l Democratic*
6 *Policy Comm.*, 113 Wn.2d 413, 433-34 (1989).

7 Here, the Letter contained allegations that are directly relevant to the subject
8 matter of the litigation: it asserted that Zillow stole Move’s data, hid evidence,
9 engaged in illegal activities to compete with plaintiffs, and violated the preliminary
10 injunction. Indeed, the major points in the Whistleblower Letter correspond directly
11 with some of the plaintiffs’ principal allegations in this case. See, e.g., Second Am.
12 Complaint ¶¶ 2.89 – 2.94, 3.47 (allegations regarding Curt Beardsley’s theft of Move
13 data); *id.* ¶¶ 2.101 – 2.106, 2.111 (allegations regarding Zillow’s efforts to circumvent
14 ListHub). The submission to the Court attaching the Letter was likewise relevant to the
15 subject matter of the litigation for the same reasons. The Court’s decision not to rely on
16 the Letter in deciding the discovery motions does not negate the fact that the Letter
17 manifestly has “some bearing” upon the subject matter of the litigation.

18 **2. Washington Privilege Law Also Forecloses All The Claims That**
19 **Are Based On Providing A Public Court Filing To The Media.**

20 To the extent Zillow’s claims are based on allegations that the plaintiffs provided
21 copies of a public court filing to the media, the claims likewise are foreclosed either by
22 the litigation privilege or by the fair and true report privilege.

23 Courts have applied the litigation privilege to statements to the media about
24 pending litigation and to the delivery of pleadings in pending litigation to the news
25 media after the suit is filed. See, e.g., *Cargill Inc. v. Progressive Dairy Solutions, Inc.*, 2008

26 _____
27 that Zillow was hiding evidence, and engaged in unlawful conduct harming the plaintiffs, it
plainly was relevant to whether discovery from third parties was justified.

1 WL 2235354, at *6 (E.D. Cal. May 29, 2008) (litigation privilege protected company that
2 posted copy of filed complaint on its website and distributed news release to the
3 media); *eCash Techs., Inc. v. Guagliardo*, 127 F. Supp. 2d 1069, 1077 (C.D. Cal. 2000)
4 (litigation privilege protected letter to third party announcing lawsuit and summarizing
5 claims); *Prokop v. Cannon*, 7 Neb. App. 334, 342-43, 583 N.W.2d 51 (1998) (news releases
6 about the case were “privileged as communications made as part of a judicial
7 proceeding”); *see also Epicor Software Corp. v. Alternative Tech. Solutions, Inc.*, 2013 WL
8 3930545, at *5 (C.D. Cal. June 21, 2013) (press release privileged); *Weiland Sliding Doors
9 & Windows, Inc. v. Panda Windows & Doors, LLC*, 2010 WL 4392547, at *4 (S.D. Cal. Oct.
10 28, 2010) (press release privileged).

11 In *Gold Seal Chinchillas, Inc. v. State*, 69 Wn.2d 828 (1966), the Washington
12 Supreme Court similarly held that statements made by the Attorney General in a press
13 release to the media concerning the initiation of litigation were protected by the
14 absolute litigation privilege. *Id.* at 830-31. This makes perfect sense, as describing the
15 allegations in a court document or providing a copy of a court document merely
16 informs the media of information that any reporter could obtain simply by going to the
17 courthouse or to the court’s website and reviewing the document. *See also Daystar
18 Residential, Inc. v. Collmer*, 176 S.W.3d 24, 28 (Tex. App. 2004) (concluding that “the mere
19 delivery of pleadings in pending litigation to the news media does not amount to
20 publication outside of the judicial proceedings that would result in waiver of the
21 absolute privilege”).

22 Apart from the litigation privilege, such conduct also is protected under the
23 common law privilege for fair and accurate reports of judicial proceedings. Washington
24 courts recognize the fair report privilege and have held that “because the filing of a
25 pleading is a public and official act in the course of judicial proceedings, the fair
26 reporting privilege attaches to pleadings even if the court has yet to act on them.” *See
27 O’Brien v. Tribune Publishing Co.*, 7 Wn. App. 107, 117 (1972). Under the fair report

1 privilege, a defendant's state of mind of alleged malice is irrelevant. *Alpine Indus.*
2 *Computers, Inc. v. Cowles Publ'g Co.*, 114 Wn. App. 371, 385 (2002). "So long as the
3 publication is attributable to an official proceeding and is an accurate report or a fair
4 abridgement thereof, it is privileged." *Id.*⁶

5 The fair report privilege is not limited to the news media but extends to anyone
6 who provides an accurate account of a court proceeding. *See, e.g., Microsoft Corp. v.*
7 *Yokohama Telecom Corp.*, 993 F. Supp. 782, 784 & n.2 (C.D. Cal. 1998) (Microsoft's paid
8 newspaper announcement, identifying companies alleged to have distributed
9 counterfeit products, did not deviate from allegations in Microsoft's complaint and thus
10 was protected under California's "fair and true report" privilege); *see also D'Annunzio v.*
11 *Ayken, Inc.*, 876 F. Supp. 2d 211, 220-21 (E.D.N.Y. 2012) (press releases and other out-of-
12 court statements are privileged to the extent they represent "fair and true reports of
13 what occurred in the proceeding"); *Aguirre v. Best Care Agency, Inc.*, 961 F. Supp. 2d 427,
14 459 (E.D.N.Y. 2013) (same); *Long v. Marubeni Am. Corp.*, 406 F. Supp. 2d 285, 294
15 (S.D.N.Y.2005) (same). As the Restatement (Second) of Torts explains:

16
17 The privilege stated in this Section is commonly exercised by newspapers,
18 broadcasting stations and others who are in the business of reporting
19 news to the public. It is not, however, limited to these publishers. It
20 extends to any person who makes an oral, written or printed report to
21 pass on the information that is available to the general public.

22 Rest. 2d Torts § 611, comment c. This application of the fair report privilege is fully
23 consistent with and effectuates the bedrock constitutional principle that "the First
24 Amendment prohibits a state from imposing sanctions based on the accurate

25
26 ⁶ As with the litigation privilege, the foreclosed counterclaims are Zillow's claims for
27 defamation, abuse of process, aiding and abetting, interference, and misappropriation of trade secrets.

1 publication of information obtained from judicial records that are open to public
2 inspection.” *Mark v. Seattle Times*, 96 Wn.2d 473, 487-88 (1981) (citing *Cox Broadcasting v.*
3 *Cohn*, 420 U.S. 469, 493-95 (1975)).⁷

4 **B. Zillow’s Trade Secret Act Claim Is Barred By Zillow’s Admissions And**
5 **Because The Whistleblower Letter Does Not Reveal Any Trade Secrets.**

6 Zillow’s counterclaim under the Washington Trade Secret Act also fails because
7 the Whistleblower Letter does not in fact reveal information that meets the definition of
8 a trade secret under Washington law – i.e., information that “[d]erives independent
9 economic value ... from not being generally known to, and not being readily
10 ascertainable by proper means by, other persons who can obtain economic value from
11 its disclosure or use.” See RCW 19.108.010(4). Desperate to manufacture a trade secrets
12 claim, Zillow lards its counterclaim with details about supposedly secret Zillow
13 programs – specifics that are nowhere to be found in the Whistleblower Letter.

14 The Court need not accept as true allegations in Zillow’s counterclaims that are
15 contradicted by the text of the Whistleblower Letter itself. See, e.g., *Sprewell v. Golden*
16 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Elf-Man, LLC v. Brown*, 996 F. Supp. 2d
17 1056, 1058 (E.D. Wash. 2014). A simple comparison between the alleged trade secrets
18 detailed in Zillow’s counterclaim and the far more general, big-picture statements in the
19 Whistleblower Letter makes clear that the Letter does not disclose any of Zillow’s
20 alleged trade secrets.

21 **1. The “LSS and LSSv2” Allegations Do Not Support A Claim For Trade**
22 **Secret Misappropriation.**

23
24
25 ⁷ NAR is not subject to the “self-publisher” exception to the Restatement rule because it did not
26 make the original statements and because the Restatement’s self-publisher exception has been
27 held to apply only in situations where a party “maliciously institutes a judicial proceeding
alleging defamatory charges.” *Rosenberg v. Helsinki*, 328 Md. 664, 685, 616 A.2d 866 (Md. 1992),
cert. denied, 509 U.S. 924 (1993).

1 Zillow devotes a considerable part of its counterclaim to a detailed description of
2 its “secret programs” called LSS and LSSv2. See Counterclaim ¶¶ 26-30. Zillow says it
3 developed these programs as a means of “ [REDACTED]
4 [REDACTED] ” *Id.* ¶ 26. None of the information in these paragraphs, however, can be
5 found in the Whistleblower Letter. Instead, the Letter contains vague and general
6 references to the fact that Zillow was undertaking efforts to maintain “listings
7 accuracy.” See Appendix 1.

8 Contrary to Zillow’s allegation, the Letter does not state that Zillow has a
9 “ [REDACTED] ” that “ [REDACTED]
10 [REDACTED] ” See Counterclaim ¶ 30(a). The Letter does not disclose this.
11 To the extent the Letter provides any specifics, it alleges *different* conduct, which Zillow
12 has claimed under oath is *not* part of LSS or LSSv2. Specifically, the Letter states that
13 “Zillow illegally uses the realtor.com website to benchmark their listing count and
14 figure out what listings are missing.” Appendix 1, p. 2. The letter does not divulge any
15 specifics as to how Zillow has done that.

16 More importantly, scraping data from websites without authorization is
17 unlawful. See *Craigslist Inc. v. 3Taps, Inc.*, 964 F. Supp. 2d 1178, 1181-84 (N.D. Cal. 2013)
18 (scraping data from website after access has been revoked violates the federal
19 Computer Fraud and Abuse Act); *eBay, Inc. v. Bidder’s Edge, Inc.*, 100 F. Supp. 2d 1058,
20 1069-71 (N.D. Cal. 2000) (unauthorized website scraping is a tort). If in fact Zillow
21 engaged in unlawful conduct to improve its listings accuracy, a description of that
22 conduct could not constitute a trade secret because illegal activities can never be
23 protected as trade secrets. See, e.g., *Alderson v. United States*, 718 F. Supp. 2d 1186, 1199-
24 1200 (C.D. Cal. 2010) (“the Court disagrees with Plaintiffs’ legal premise that a person
25 can receive trade secret protection for information about ongoing illegal activities.”),
26 *aff’d*, 686 F.3d 791 (9th Cir. 2012); *Goodman v. Genworth Fin. Wealth Mgmt.*, 881 F. Supp.

1 2d 347, 355 (E.D.N.Y. 2012) (“[d]eceptive, illegal or fraudulent activity simply cannot
2 qualify for protection as a trade secret”).

3 Likewise, Zillow complains that the Letter reveals that it “[REDACTED]
4 [REDACTED]” Counterclaim ¶ 30(c). But the Letter does not say that
5 either. Instead, the Letter states that Zillow accesses IDX listings data from its Diverse
6 Solutions subsidiary to “*compare against data scraped from realtor.com,*” an allegation of
7 unlawful conduct that Zillow has denied. See Appendix 1, p. 2. The Letter does not
8 disclose any specific information about Zillow’s alleged practice. And such conduct
9 could not qualify for trade secret protection anyway because by definition it would be
10 unlawful.

11 Impliedly conceding the Whistleblower Letter does not disclose the actual
12 content of its proprietary secret programs, Zillow alleges that the Letter nonetheless
13 reveals trade secrets because it identifies the secret programs by name and “[REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]” Counterclaim ¶ 30. But the *names* of Zillow’s programs (LSS and
17 LSSv2) cannot, as a matter of law, constitute trade secrets because the names in and of
18 themselves do not derive independent economic value from not being generally known
19 to or ascertainable by people who could obtain economic value from their disclosure or
20 use. See RCW 19.108.010(4). Nobody hearing that Zillow had programs called “LSS”
21 and “LSSv2” would even know what those letters stood for. That is the whole point of
22 giving code names to projects and programs – so that people can refer to secret
23 information without revealing it.

24 The mere fact that Zillow makes efforts to maintain listing quality cannot be a
25 trade secret because Zillow does not allege that its efforts in this area are unknown to
26 the public. Indeed, Zillow acknowledges in its own pleading that “[c]onsumers,
27 agents, and brokers demand complete and accurate information.” Counterclaim ¶ 25.

1 Similarly, the “[REDACTED]” Zillow’s proprietary programs
2 (Counterclaim ¶ 30(b)) cannot possibly be valuable to competitors in the absence of any
3 information about what the programs actually entail.

4 For the same reasons, Zillow’s further claim that the Letter discloses that Zillow
5 “[REDACTED]” (Counterclaim ¶ 30(d))
6 does not support a trade secret claim because the Letter does not disclose that Zillow
7 does this. It says nothing about [REDACTED]. The Letter says Zillow runs its illegal
8 programs from offshore “so that they can’t be traced back to Seattle” – that is, so that
9 Zillow won’t get caught.

10 Finally, Zillow again fails to allege a viable basis for a trade secret claim when it
11 complains that the Letter revealed “[REDACTED]
12 [REDACTED]” Counterclaim ¶ 30(e). This is not a trade secret –
13 as Judge Chun recognized in his May 12 order unsealing this sentence of the
14 Whistleblower Letter. *See* 5/12/15 Order Re: Crocker Letter at 1-2. To the contrary,
15 Tableau’s website contains a two-page article in which two Zillow employees describe,
16 specifically, how they use Tableau to analyze listings data. *See* Appendix 3.⁸

17 **2. The “ListHub Replacement” Allegations Do Not Support A Claim For** 18 **Trade Secret Misappropriation.**

19 Zillow also contends that the last paragraph of the Whistleblower Letter
20 discloses trade secrets because it reveals Zillow was building a product to replace
21 Move’s “ListHub” product. *See* Counterclaim ¶ 38. This paragraph discloses no trade
22 secrets because it contains no substantive information whatsoever about the product.

23 ⁸ The Court may take judicial notice of news reports and other publications where they are
24 offered to show widespread coverage of a fact or event, rather than the truth of the statements
25 contained therein. *E.g., Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960
26 (9th Cir. 2010) (“Courts may take judicial notice of publications introduced to ‘indicate what
27 was in the public realm at the time’”) (quoting *Premier Growth Fund v. Alliance Capital Mgt.*,
435 F.3d 396, 401 n.15 (3d Cir. 2006)); *see also Heliotrope Gen. Inc. v. Ford Motor Co.*, 189 F.3d 971,
981 n.18 (9th Cir. 1999) (taking judicial notice “that the market was aware of the information
contained in the news articles submitted by the defendants”).

1 See Appendix 1, p. 2. The mere fact that Zillow is developing a ListHub replacement
2 product is not a trade secret. It is public knowledge that Zillow's agreement with
3 ListHub has ended, and Zillow has already launched one replacement product. As
4 Zillow itself alleges, "earlier this year" it "announced the launch of Zillow Data
5 Dashboard, which allows MLSs and brokers to provide Zillow with direct feeds and
6 provides limited reporting functionality." Counterclaim ¶ 38.⁹

7 Likewise, the fact that the Whistleblower Letter referred to the code names for
8 Zillow's new product - "squall" and "storm" - cannot support liability for trade secret
9 misappropriation for the reasons explained above: Code names are not trade secrets
10 since they do not derive independent economic value from not being known to or
11 ascertainable by people who could obtain economic value from their disclosure or use.
12 See RCW 19.108.010. Again, the entire point of a code name is that it allows people to
13 refer to projects or programs without revealing confidential information.

14 Finally, as noted above, unlawful conduct - including developing products to
15 undermine ListHub in violation of this Court's preliminary injunction - cannot support
16 a trade secrets claim as a matter of law. See *Alderson*, 718 F. Supp. 2d at 1199-1200, *aff'd*,
17 686 F.3d 791 (9th Cir. 2012).

18 **C. Zillow's Defamation Claim Also Fails To The Extent It Is Based On**
19 **Alleged Implications That Are Not Based On Statements In The Letter.**

20 Zillow's defamation claim is the cynical foil to its trade secrets claim: Zillow tries
21 to have it both ways by alleging both that the Whistleblower Letter's descriptions of
22 Zillow's conduct *simultaneously* revealed true facts about Zillow's business practices
23 that constituted protectable trade secrets *and* falsely described those same business
24 practices in a way that is defamatory to Zillow. As it does with its trade secrets claim,

25 _____
26 ⁹ See also Appendix 4 (2/18/15 Trulia M&A call) at 6 (Zillow CEO boasting to stock analysts
27 that, when Zillow cancelled its contract with ListHub, Zillow had "spent the last several
months" collecting "direct listing feeds from MLS after MLS," and that it had "dozens more ...
in the deal pipeline that will be announced over the next couple of months").

1 Zillow strains to state a defamation claim by grossly exaggerating and embellishing the
2 contents of the Whistleblower Letter – in this case, by manufacturing supposed
3 “implications” that find no footing in any actual statements in the Letter. *E.g.*,
4 Counterclaim ¶¶ 47, 48.¹⁰

5 Under Washington law, the words actually used are what matters for purposes
6 of a defamation claim. Washington courts are “bound to invest words with their
7 natural and obvious meaning and may not extend language by innuendo or by the
8 conclusions of the pleader.” *Sims v. KIRO, Inc.*, 20 Wn. App. 229, 234 (1978).
9 “Defamatory meaning may not be imputed to true statements,” even where the speaker
10 used “irony or innuendo” to “strongly imply” that the plaintiff committed wrongdoing.
11 *Lee v. Columbian, Inc.*, 64 Wn. App. 534, 538 (1991); *see also Exner v. American Med. Ass’n*,
12 12 Wn. App. 215, 219 (1974) (even if language is ambiguous, resolution in favor of a
13 “disparaging connotation” is not justified); *Sisley v. Seattle Pub. Sch.*, 180 Wn. App. 83,
14 87-91 (2014) (school newspaper article which strongly implied wrongdoing by local
15 landlords was not actionable because it did not contain statements that were provably
16 false).¹¹

17 Zillow flouts these long-established principles. In Paragraph 47 of its
18 counterclaim, for example, Zillow asserts that a sentence in the Whistleblower Letter
19 regarding Curt Beardsley’s theft of Move databases “*necessarily implies* that Zillow has
20 *participated in and intentionally benefited from* multiple databases that Mr. Beardsley
21 allegedly took with him when he left Move” Counterclaim ¶ 47 (emphasis added).

23 ¹⁰ As noted above, the Court is not obliged to accept Zillow’s invitation to pretend the
24 Whistleblower Letter contains statements that it manifestly does not contain. *See, e.g., Sprewell*
25 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Elf-Man, LLC v. Brown*, 996 F. Supp. 2d
26 1056, 1058 (E.D. Wash. 2014).

27 ¹¹ Similarly, the mere juxtaposition of true statements cannot support a claim for defamation by
implication. *See United States Mission Corp. v. KIRO TV, Inc.*, 172 Wn. App. 767, 772 (2013);
Yeakey v. Hearst Commc’ns, Inc., 156 Wn. App. 787, 791 (2010); *see also N.Y. Studio, Inc. v. Better*
Bus. Bureau, 2011 WL 2414452, at *5 (W.D. Wash. June 13, 2011).

1 While Zillow's characterizations are very likely true, they do not appear in the
2 Whistleblower Letter. Instead, the sentences in the Letter that Zillow challenges in
3 Paragraph 47 do not say anything about Zillow's "intentions" or whether Zillow
4 "participated in" Mr. Beardsley's theft of Move databases. Instead, the Letter simply
5 provides a roadmap for where to look for evidence of trade secret theft by Mr.
6 Beardsley. The challenged sentences state:

7
8 Curt has copies of Move's private MLS contact database, listing
9 count database and other databases stolen from Move. He uses a
10 google docs account to keep them off of his work computer.

11 Appendix 1. Zillow does not contend that any factual statement in those sentences is
12 false. Accordingly, Paragraph 47 cannot support a claim for defamation.

13 Zillow's contentions in Paragraph 48 suffer from the same fatal defect. Zillow
14 makes non-sequitur references to the activities of Zillow employee Will Hebard but
15 does not deny the Letter's assertion about Mr. Beardsley's possession of a stolen Move
16 database of MLS contacts. Zillow then alleges similar "implications" about its
17 "participation" and "intentions" that are not supported by an actual statement in the
18 Letter. Thus, Paragraph 48 cannot support Zillow's defamation claim either.

19 Zillow also clutches at straws in Paragraph 46 when it attempts to ground its
20 defamation claim on the statement in the Whistleblower Letter that a Zillow temporary
21 employee was "terminated mysteriously around the time [plaintiffs] started asking for
22 background on Errol's whereabouts." Counterclaim ¶ 46. Zillow does not deny the fact
23 that the employee was terminated at approximately that time. *Id.* All that Zillow takes
24 issue with is the word "mysteriously," which merely reflects the author's subjective
25 opinion and does not state or imply any factual information. *Id.* Under Washington
26 law, a claim for defamation requires pleading and proof of a false statement of *fact*.
27 *Robel v. Roundup Corp.*, 148 Wn.2d 35, 55 (2002). It is well settled that pure statements of

1 subjective opinion, or instances of colorful rhetorical hyperbole, cannot form the basis of
2 a defamation claim. *See, e.g., Dunlap v. Wayne*, 105 Wn.2d 529, 537-39 (1986) (adopting
3 the rule of Restatement § 566 that statements of “‘pure’ opinion” are “nonactionable”);
4 *see also Robel*, 148 Wn.2d at 55 (because “expressions of opinion are protected under the
5 First Amendment,” they “are not actionable”); *Haueter v. Cowles Pub. Co.*, 61 Wn. App.
6 572, 586 (1991) (same for statements involving rhetorical hyperbole).

7 The Letter’s statement merely communicates the author’s subjective opinion that,
8 from his perspective within Zillow’s organization, the circumstances of this employee’s
9 termination were “mysterious.” Any third party reading this statement would
10 understand it as one of opinion, and not of fact, and it therefore cannot support a claim
11 for defamation. *See Phillips v. Seattle Times Co.*, 818 F. Supp. 2d 1277, 1283-84 (W.D.
12 Wash. 2011) (statement that plaintiff “unexpectedly left town” and that the sudden
13 closure of his business “was a mystery” were non-actionable statements of opinion);
14 *Point Ruston, LLC v. Pac. N.W. Reg’l Council of United Bhd. of Carpenters & Joiners of Am.*,
15 2010 WL 3732984, at *9 (W.D. Wash. Sept. 13, 2010) (statements that plaintiff was a
16 “questionable developer” constituted non-actionable statements of “opinion” and
17 “hyperbole”).

18 **D. Zillow’s Claim For Abuse Of Process Fails As A Matter Of Law.**

19 Zillow’s claim for abuse of process fails to satisfy the strict limitations for the tort
20 under Washington law and must be dismissed for this independent reason. Abuse of
21 process “is the misuse or misapplication of the process, after the initiation of the legal
22 proceeding, for an end other than that which the process was designed to accomplish.”
23 *Saldivar v. Momah*, 145 Wn. App. 365, 388 (2008). The two essential elements of the tort
24 are “(1) the existence of an ulterior purpose – to accomplish an object not within the
25 proper scope of the process – and (2) *an act in the use of legal process* not proper in the
26 regular prosecution of the proceedings.” *Fite v. Lee*, 11 Wn. App. 21, 27 (1974) (emphasis
27

1 added); accord *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now*
2 (*C.L.E.A.N.*), 119 Wn. App. 665, 699 (2004).

3 It is well settled that “the mere institution of a legal proceeding even with a
4 malicious motive does not constitute an abuse of process.” *Saldivar*, 145 Wn. App. at
5 388 (quoting *Fite*, 11 Wn. App. at 27-28). Accordingly, the mere filing of the
6 Whistleblower Letter as an exhibit in support of discovery motions cannot support a
7 claim for abuse of process – regardless of Zillow’s allegations about plaintiffs’ improper
8 purpose or state of mind. See *Batten v. Abrams*, 28 Wn. App. 737, 749 (1981).

9 Instead, the “gist of the action” for abuse of process is the misuse or
10 misapplication of the court’s process, after it has been issued, “for an end other than
11 that which it was designed to accomplish.” *Loeffelholz*, 119 Wn. App. at 699-700
12 (quoting *Batten*, 28 Wn. App. at 745). This second element of the tort is satisfied only
13 where, after filing suit, a party has used the court’s legal process “to compel the adverse
14 party to do some collateral thing which he could not legally be compelled to do.” *Fite*,
15 11 Wn. App. at 28; accord *Saldivar*, 145 Wn. App. at 389. Specifically, the tort requires
16 extortion, in negotiations, where legal process is used “as a threat or a club” to obtain
17 payment or surrender of property -- not the mere use of judicial process itself. See
18 *Batten*, 28 Wn. App. at 746 (collecting cases; quoting B.W. Prosser, *LAW OF TORTS*, 121 at
19 856 *et seq.*(4th ed. 1971)); see also *Loeffelholz*, 119 Wn. App. at 699-700 (“In other words,
20 the action requires ‘a form of extortion, and it is what is done in the course of
21 negotiation, rather than the issuance or any formal use of the process itself, which
22 constitutes the tort.”).

23 Zillow’s claim does not and could never satisfy that requirement. Filing a
24 declaration and exhibit in support of a discovery motion is not an act outside the
25 regular conduct of litigation. Providing a copy of the public court filing to the media
26 also is not outside the scope of legitimate litigation conduct – especially where, as here,
27 plaintiffs reasonably could expect that publicizing a whistleblower’s allegations might

1 inspire other whistleblowers to come forward and expose further unlawful conduct by
2 Zillow. Such a strategy indeed is consonant with Washington's strong public policy to
3 encourage whistleblowers to come forward. *See, e.g., Thompson v. St. Regis Paper Co.*, 102
4 Wash.2d 219, 232-34 (1984).

5 **E. Zillow's Aiding And Abetting and Interference With Contract Claims**
6 **Fail To Allege Essential Elements And Must Be Dismissed.**

7 Zillow's counterclaim for aiding and abetting a breach of fiduciary by Mr.
8 Crocker also fails on its face. To establish liability, Zillow must show that plaintiffs
9 knew that Mr. Crocker's conduct constituted a breach of his duty of confidentiality *and*
10 that plaintiffs gave "substantial assistance or encouragement" to Mr. Crocker. *See*
11 *Brashkis v. Hyperion Capital Grp., LLC*, 2011 WL 6130787, at *3 (W.D. Wash. Dec. 8, 2011)
12 (describing elements and citing Rest. 2d of Torts § 876(b)). Here, Zillow fails to allege
13 that NAR did anything to give "substantial assistance or encouragement" to Mr.
14 Crocker at or before the time he wrote the anonymous letter and sent it to plaintiffs'
15 counsel. Instead, Zillow's claim is based entirely on alleged conduct that occurred *after*
16 Mr. Crocker sent the letter - namely, submitting it to the Court and providing it to third
17 parties. *See* Counterclaim ¶ 70.

18 For similar reasons, Zillow's interference claim fails as a matter of law. In
19 Washington, the tort of interference with contract requires pleading and proof that the
20 defendant knew about the existence of a contractual relationship and took steps to
21 induce the breach of that contract. *See, e.g., Leingang v. Pierce County Medical Bureau*, 131
22 Wn.2d 133, 157, (1997). Here, Zillow utterly fails to allege either that NAR knew about
23 any contract between Zillow and the anonymous whistleblower. More importantly,
24 Zillow does not - and cannot - allege that NAR "induced" any breach of a
25 confidentiality agreement because any such agreement already was breached by the
26 time plaintiffs' counsel received the Whistleblower Letter. Once again, the conduct that
27 Zillow complains about all occurred *after* Mr. Crocker mailed the Letter. *See*

1 Counterclaim ¶ 75. Zillow’s allegations are insufficient to support a claim for
2 interference with contract. *See Woods View II, LLC v. Kitsap Cnty.*, 352 P.3d 807, 821
3 (Wash. Ct. App. 2015) (rejecting tortious interference claim because the plaintiff failed to
4 show that the defendant’s action caused the early termination of the plaintiff’s contract);
5 *Woody v. Stapp*, 146 Wn. App. 16, 23-24 (2008) (rejecting tortious interference claim
6 where plaintiff could not establish causation).

7 Zillow is fully aware that NAR did nothing to induce Mr. Crocker to come
8 forward with his whistleblower allegations, which explains it has failed to allege the
9 basic factual predicate that would support a claim for interference with contract or
10 aiding and abetting breach of fiduciary duty. Because no truthful amendment can cure
11 the defects in these claims, both claims must be dismissed.

12 **F. Zillow’s Claim For Breach Of The Protective Order Is Baseless.**

13 Zillow’s counterclaim for breach of the protective order likewise fails as a matter
14 of law. It is well settled that the breach of a court-entered protective order does not give
15 rise to an independent cause of action. *See, e.g., Minerals Dev. & Supply Co. v. Hunton &*
16 *Williams, LLP*, No. 10-488, 2011 WL 4585321, at *13 (W.D. Wis. Sept. 30, 2011); *In re John*
17 *Adams Assocs., Inc.*, 255 F.R.D. 7, 9 (D.D.C. 2008); *Westinghouse Electric Corp. v. Newman &*
18 *Holtzinger, P.C.*, 39 Cal. App. 4th 1194, 1200 (1996) (turning a “violation of a discovery
19 order into a tort” is “a tactic which courts have uniformly rejected”).

20 This claim also fails because plaintiffs did not violate the Protective Order by
21 disclosing the Whistleblower Letter. As explained above, the Letter discloses no
22 proprietary trade-secret information of Zillow’s. But more fundamentally, the Letter
23 cannot be covered by the Protective Order because the Protective Order only applies to
24 material produced in discovery in this lawsuit. *See* Second Am. Prot. Order ¶ 1
25 (“Scope”). The Whistleblower Letter was not produced in discovery. It was mailed to
26 Plaintiffs’ counsel by a third party, independent of this Court’s discovery procedures.
27

1 Because Zillow did not produce the letter, it is not the “disclosing party” for the
2 purposes of the Protective Order, and it did not have the right to designate the Letter
3 Confidential or OCEO. *See id.*

4 To the extent Zillow claims the Protective Order can operate to bar the disclosure
5 of information obtained *outside* of the discovery process, then the Protective Order
6 violates the First Amendment and the Washington Constitution. *See Bridge C.A.T. Scan*
7 *Assocs. v. Technicare Corp.*, 710 F.2d 940, 944-45 (2d Cir. 1983) (issuing writ of mandamus
8 reversing, on First Amendment grounds, protective order that barred a party from
9 disseminating allegedly trade-secret information obtained outside of discovery).

10 It is black-letter law that a protective order can be issued *only* with respect to
11 information acquired through the court’s discovery mechanisms. *Kirshner v. Uniden*
12 *Corp. of America*, 842 F.2d 1074, 1080 (9th Cir. 1988); *Bridge*, 710 F.2d at 944-45; *see also* 26
13 Fed. Prac. & Proc. Evid. § 5652 (1st ed. 2015). Rule 26 “is not a blanket authorization for
14 the court to prohibit disclosure of information whenever it deems it advisable to do so,
15 but is rather a grant of power to impose conditions on discovery in order to prevent
16 injury, harassment, or abuse of the court’s processes.” *Kirshner*, 842 F.2d at 1080
17 (quoting *Bridge*, 710 F.2d at 944-45). A protective order that bars litigants from
18 disseminating information obtained *outside* of the discovery process violates the First
19 Amendment’s guarantee of freedom of speech. *Bridge*, 710 F.2d at 946.

20 In *Seattle Times v. Rhinehart*, 467 U.S. 20 (1984), the Supreme Court held that when
21 “a protective order is entered on a showing of good cause as required by Rule 26(c), it is
22 *limited to the content of pretrial discovery, and does not restrict the dissemination of the*
23 *information if gained from other sources, it does not offend the First Amendment.”* *Id.* at 37
24 (emphasis added). The logical corollary to this holding is that “when protective orders
25 are not limited to the context of pretrial discovery, they may offend the First
26 Amendment.” *Gulino v. Board of Educ.*, 2003 WL 1878235, *2 (S.D.N.Y. Apr. 11, 2003)
27 (citing *Seattle Times*, 467 U.S. at 37).

1 **CONCLUSION**

2 For all of the foregoing reasons, plaintiffs National Association of Realtors and
3 Realtors Information Network, Inc. respectfully move the Court to dismiss all of
4 Zillow’s counterclaims asserted against them pursuant to CR 12(b)(6).

5
6 DATED September 8, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2015, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to the following individuals registered to receive electronic notices by email transmission at the email addresses provided thereto.

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1 I declare under penalty of perjury under the laws of the State of Washington that the
2
3 foregoing is true and correct.

4 DATED at Seattle, Washington on September 8, 2015.
5
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Appendix 1

**Anonymous Letter Received by Plaintiffs'
Counsel on 4/10/15**

***See 6/3/15 McMillan Decl. ISO Zillow's Opp. to Plaintiff's
Mtn. to Revise SM Order, Ex. F.***

treasure map of misc clues for errol
this document never existed so shred it once you have read it. It should give you enough clues that you can find references in emails so that you could have discovered this info on your own.

Was he working while on injunction? yes, absolutely.
Was he careful so you couldn't catch him, yes, absolutely.

Places to look:

His first administrative assistant. Jessica manni 310-866-2213
jessicamanni@gmail.com she was contractor from a temp agency for 8 months. She was arranging his travel, had full access to his calendar and did his expenses. She supported him before and after the injunction. She was terminated mysteriously around the time you started asking for background on Errol's whereabouts.

His second admin Molly Andiamo. She is also a temporary contractor and is still working for Errol and Curt. She was also doing expenses, scheduling and travel

Concur - Zillow uses concur for all reimbursements and all receipts are required in the concur system to pay an employee back. Errol's concur account will contain all travel, dining and expenses with copies of all the receipts. It should also contain the names of the companies or people he was meeting with, as they are requirements in the system for the expense to be approved. His concur account will show his whereabouts. Spencer has to personally approve large amounts so Spencer will have to be aware of what Errol was doing to approve these reports. Spencer personally reviews the expenses of all his directs and he actually pays attention to the details as he is super frugal.

Inman Technology Conference, NYC (January, 2015). Curt booked private meeting rooms at a hotel near the conference. Curt's calendar will reflect the meetings and his admin's email will contain scheduling emails to arrange the meetings. Errol was present at most of those meetings. Errol was in NYC working when he wasn't supposed to be. Find out who they met with and the other parties will confirm that he was present. His hotel reservations were done centrally by Zillow's event team. It is an employee who heads up events who works for Mitch Robinson (Carrie?) who did a group reservation and he was on it.

Also... on the IP issues.

Curt has copies of Move's private MLS contact database, listing count database and other databases stolen from Move. He uses a google docs account to keep them off of his work computer. He has accessed it from work and Many other employees have witnessed him using this database and he is using it to benefit Zillow's efforts as Zillow's database is inferior. Employee Will Hebbard works on this and has seen Curt using it. Will is the keeper of Zillow's database which is now supplemented by

the data Curt stole from Move. Will keeps the Zillow database in Google docs and Will has invited Curt to his google docs to share accounts but Curt declined the access as he was concerned that would allow you access into his google account which he is using for work but claiming to not use for work. Browser history on Curt's company laptop will show he connects to multiple cloud storage accounts where he utilizes stolen IP from Move to benefit him in his new role.

Ask Errol, Greg, Spencer and Curt about secret programs called "LSS" and "LSS v2" It should come up enough in emails around listing quality for you to find references to it in the emails you have. Zillow illegally uses the realtor.com website to benchmark their listing count and figure out what listings are missing. The program was set up by Erin Conningsby and Jeff Lubetkin (Jeff left the company so you could ask him directly). They also illegally access IDX listing data from the Diverse Solutions sub company (stolen from agent websites) to compare against data scraped from realtor.com. It's run from offshore so it can't be traced back to Seattle. The program was improved after Errol arrived at Zillow and uses offshore labor to steal the data. The listing quality is also generated from this data and output to the executives via a report in a system called Tableau. The tableau listing quality reports were used to plan the assault on ListHub by determining exactly who was sending data to Zillow via listhub via the scraping efforts and comparing to the agent IDX data used against the terms of service for that data. Analysis was done by an employee named Tom and delivered to Greg Schwartz and Errol.

The sales team also scrapes the customer lists from realtor.com to use as target customer call lists for the Zillow sales team. Work was done by someone in OC working for Jon Mabe. This would involve Jon Mabe, Tony Small, Justin LaJoie, Greg Schwartz and the salesforce.com administrators (David Lindau who imported the stolen data into the Zillow salesforce database). Jon Mabe used his email account to share these files around to multiple people at Zillow.

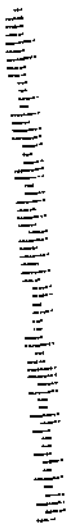
Jon Mabe built the ListHub replacement product (code names "squall" and "storm"). Emails to and from Jon Mabe will contain lots of the timing around the product being built. It was constructed well in advance of the ListHub renegotiation breaking down as a preemptive strike.

Good hunting.



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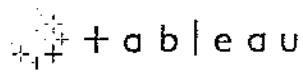


Appendix 2
Filed Under Seal

Appendix 3

Tableau Software, Press Release, Zillow Grows During Recession Using Self-Service Analytics,

available at [http://www.tableau.com/learn/stories/zillow-grows-during-recession-using-self-service-analytics.](http://www.tableau.com/learn/stories/zillow-grows-during-recession-using-self-service-analytics)



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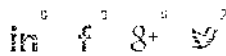


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Zillow Grows During Recession Using Self-Service Analytics



Zillow is a real estate marketplace that helps people find and share information about homes, real estate and mortgages. In this interview, Senior Data & Analytics Specialist Steve Brownell and Senior Business Analyst Terry Johnson talk with us about how Tableau helps them provide self-serve business intelligence for business users to answer their own questions.

Tableau: What made you look to Tableau for support with analytics?

Torry: For us analysts, Tableau desktop has been a great tool to work with these large data sets that we have to find insights. It's quick and it's easy. It's been a lot better than digging through raw data. And we're starting to get more and more adoption, more excitement around Tableau Server with different people within the company, which is nice for us because we spend less time building reports for them and they spend more time actually utilizing the data that we have available.

Steve: I generate a lot of information that other people use to try to inform our higher-level executives and people all throughout the organization so that they're enabled to make intelligent decisions with data.

Torry: Ultimately we want our users to be able to use Zillow to find a home, which is the biggest purchase they'll make in their life and it's a very personal purchase. By finding ways to help make this process easier for them, we make it not so stressful to make this purchase that should be kind of a fun and exciting event.

Tableau: How are Tableau Desktop and Tableau Server proving to be valuable?

Steve: Our rentals dashboard on Tableau Server enables us to dive into states and feed providers with our rental listings and we can look for quality issues both by cross cuts across both those dimensions. We can really dive into where we have opportunities or issues with data quality and prioritize different regions to go after to acquire new listings.

Torry: A lot of the data sets we work with are quite large, and Tableau gives us a way to dig into that data and kind of quickly see where it is that something interesting is happening—whether there's an outlier in a certain area, or if there's a particular metric that we're looking at that's going to point us towards a big opportunity or possibly a problem with a product.

Tableau: How big is your data set?

Torry: We have data on every home in the U.S., and that's over 100 million homes—so that's over 100 million rows just in that database.

Steve: We've got lots of different metadata dimensions across contacts—where consumers are contacting real estate agents through Zillow? Was it on a mobile app? Was it on a for sale by property? Was it a rental?

Torry: We also have a mortgage product where lenders provide tens of millions of loan quotes every month to users who are trying to find the best rate on a mortgage—that's hundreds of millions of rows. Just being able to crunch that data into something manageable is where Tableau really helps us.

Tableau: How does Tableau help you examine that data?

Torry: With large data sets, we're looking at a lot of things like distributions and histograms and looking for anything that might point out to us an opportunity for us to possibly generate more revenue, or create something that helps our customers in their experience for shopping for homes.

Steve: We can allow the product managers to basically slice all that data in Tableau Server by setting up a bunch of filters so that they can do the analysis that they want, and we just provide the data for them to make the insights.



Zillow is a real estate marketplace that helps people find and share information about homes, real estate and mortgages. In this interview, Senior Data & Analytics Specialist Steve Brownell and Senior Business Analyst Terry Johnson talk with us about how Tableau helps them provide self-serve business intelligence for business users to answer their own questions.

Watch the video



Anywhere from 30 to 50 percent of my time used to be spent creating ad hoc reports. Now it's dropped dramatically.

Torry Johnson
Zillow

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Torry: Real estate is very geographical and because Tableau has such strong mapping support, it's really super useful to us. Rather than just line charts and bar charts, we can provide more context so the business owner can look for patterns in geography which are -- which are hard to do without a map. There aren't a lot of other products out there that have the built-in, drag-and-drop map interface.

Tableau: What are some patterns Tableau has illuminated?

Steve: Using this Tableau Server dashboard, we found there's a geographical discrepancy where some people would label a unit a condo and others labeled it an apartment. So we thought that we had this weird mix of units, but it actually turned out to just be geographical terminology. Once we saw that on a map, we knew how to come at the problem a little bit better.

Torry: With hundreds of millions of loan quotes, some users don't get a lot of quotes for the particular loan they're looking for. By looking at the distribution of this data and how it's spread out across different loan types, we can figure out users who have particular credit score problems may not get as many loan quotes, or maybe if you want an investment property it's a little harder to find a lender who's willing to lend in the current kind of real estate environment. So we can look at all these different characteristics and see what type of response users are getting, if they're having a good experience shopping for their loan on Zillow or not.

Steve: Our economics team has published a lot of things using the Tableau Public product. One really cool one that they've done is a negative equity. So if your house is underwater, you can zoom by county or ZIP code and see exactly how much your county or ZIP code is underwater on average. You can really personalize the data as opposed to just having a national snapshot number in an article; you can zoom in and see how it affects you more realistically than just the average American. That's a lot more powerful, we think.

Tableau: Are you getting a good response online with Tableau Public?

Steve: We've had very high engagement rates with the Tableau Public products we've put out on the Web. People really enjoy seeing how they can dial into their neighborhood and see how the market is affecting them. We've got all sorts of metrics around growth of the market and home values. People are really interested to see how their trend in a small market area compares to other neighborhoods.

Tableau: How has the use of Tableau expanded at Zillow?

Torry: We started by using Tableau Desktop about three years ago with roughly five users primarily on the analytics team to explore these big data sets and answer questions for different people from the business. It was more just for our analysts to dig in and look for insights.

Steve: It had organic growth from there as we started to disseminate that information. We'd embed it in e-mail reports and use it in presentations when running a meeting. People always asked where we got our graphs.

Torry: Now it's really spread throughout the company as a tool that we all use.

Tableau: How has Tableau Server impacted the way people at Zillow work?

Steve: Tableau enables people to have more a "pull" relationship than a "push" relationship with the data. So our small analytics team can better serve more users because we don't have to answer every question; instead we provide a framework for people to answer their own questions.

Steve: It's just a great way to be able to interact with data as opposed to just receive data. That really adds another level of insight that you can gain by being able to not just be presented with something, but to be able to create something based off of a platform that's given to you.

Tableau: How has Tableau Server impacted the way your analytics team works?

Torry: About a year and a half ago, we switched to using Tableau Server so we could deliver more reports to users within the company.

Steve: It frees up a lot of resources for us to be a little more nimble and create more platforms than answers. I feel like it increases my efficiency as an analyst because I can serve more people and helps us to be more nimble.

Torry: Anywhere from 30 to 50 percent of my time used to be spent creating ad hoc reports and now it's dropped dramatically. Tableau Server really helped us in the BI department not have to do so many ad hoc reporting requests that take up a lot of time. We can push things out there. They're interactive; people can dig in; they can find what they want. And we can spend our time looking for those little nuggets of insight in the data rather than just responding to requests all the time.

Steve: There tend to be some power users at Zillow who really want all this extra data. For their needs, we can surface that data up in Tableau Server. Users go to the server as a data source and pull it down—they

help themselves, really instantly. They trust it as a data source and really enjoy they can get results so quickly.

Torry: If we didn't have Tableau, we would spend more of our time working one-on-one helping business people dig into data, drill down, find insights and find problems. With Tableau, they can do that in a self-serve manner and then come to us to help solve the problem rather than find it.

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Appendix 4

**S&P Capital IQ, McGraw Hill Financial, “Trulia,
Inc. M&A Call,” 2/18/15,
available for purchase at**

**[https://www.mhfi.com/about/our-businesses/sp-
capital-iq](https://www.mhfi.com/about/our-businesses/sp-capital-iq)**



Trulia, Inc. NYSE:TRLA

M&A Call

Wednesday, February 18, 2015 2:00 PM GMT

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Call Participants

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Raymond Jones

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*RBC Capital Markets, LLC,
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Rodney A. Hull
*SunTrust Robinson Humphrey,
Inc., Research Division*

Ronald V. Josey
*JMP Securities LLC, Research
Division*

Thomas Cauthorn White
Macquarie Research

Presentation

Operator

Good day, ladies and gentlemen, and welcome to Zillow's discussion of the Trulia acquisition. [Operator Instructions] And as a reminder, this conference call is being recorded. I would now like to hand the conference over to Mr. Raymond James, Vice President, Investor Relations. Sir, you may begin.

Raymond Jones

Thank you. Good morning, and welcome to Zillow's discussion of the acquisition of Trulia. Joining me today to talk about the close of the transaction is Spencer Rascoff, Chief Executive Officer; and Chad Cohen, Chief Financial Officer.

Before we get started, as a reminder, during the course of this call, we will make forward-looking statements regarding the future financial performance of the company and future events, including our expectations regarding Zillow's acquisition of Trulia. We caution you to consider the important risk factors that could cause the company's actual results to differ materially from those in the forward-looking statements made in the press releases and on this conference call. These risk factors are described in our press releases and are more fully detailed under the caption Risk Factors in Zillow's Annual Report on Form 10-K for the annual period ended December 31, 2014, and in our other filings with the SEC.

In addition, please note that the date of this conference call is February 18, 2015, and any forward-looking statements that we make today are based on the assumptions as of this date. We undertake no obligation to update these statements as a result of new information or future events.

This call is being broadcast on the Internet and is available on the Investor Relations section of the Zillow Group website at investors.zillowgroup.com. A recording of this call will be available after 12 p.m. Eastern Time today. Please note that the press release announcing the close of the transaction is available on our website. And after the call, a copy of today's prepared remarks will also be available on our website. Today, we will open the call with prepared remarks to start, and then we will host a live question-and-answer session.

I will now turn the call over to Spencer.

Spencer M. Rascoff

Chief Executive Officer and Director

Thanks, RJ, and thanks, everyone, for joining us this morning. This is a pivotal day in our company's history, and we were extremely pleased that we have now closed the acquisition of Trulia. We're looking to our future as a combined company with tremendous anticipation and excitement. Taking a long-term view, this is an excellent outcome for consumers, customers, employees and shareholders of both companies. I'm pleased to announce the formation of Zillow Group, which is the media company that maintains our portfolio of consumer and business-to-business brands, which includes, on the consumer side, Zillow, Trulia, HotPads and StreetEasy. On the business-to-business side, we have Market Leader, Diverse Solutions, Mortech, Postlets, Retsly and ActiveRain. We are extremely excited to begin the next phase in our evolution to become the largest, more trusted and vibrant home-related marketplace.

In our continuous effort to achieve this mission, our main strategic priority for 2015 is the successful integration of Trulia. Over the coming quarters, both Zillow and Trulia management will work closely to combine our complementary teams and cultures of innovation. Key to this integration effort is our intent to execute a brand portfolio strategy, which allows consumers a choice of diverse experiences in shopping for a home or rental on mobile and Web while enabling our advertisers to increase their reach to more consumers.

While we are welcoming many members of Trulia to the new company, as with any integration effort, there were some roles that were eliminated. After careful consideration, we've made the difficult decision to eliminate approximately 280 positions yesterday and approximately 70 positions 3 months from now, mainly in San Francisco and Bellevue, primarily due to redundancy in the combined company's sales and support organizations. There are now approximately 2,000 employees at Zillow Group.

For Zillow Group overall, once we are able to present combined pro forma financial information and new business metrics, we will lay out more of our operating plans and objectives as well as discuss our other strategic priorities. On today's call, we won't be providing guidance and we won't be providing any

commentary on the synergy numbers from last night's [ph] announcement. We anticipate being able to provide more information on our first quarter earnings call in May. In the meantime, you can get more information at Zillow Group's new website, zillowgroup.com, or on Twitter with the handle @ZillowGroup. In conclusion, as we embark on our second decade as a company, the dawn of a new era in real estate marketing has arrived as Zillow and Trulia come under one roof, and we cannot be more excited about the opportunity.

Our addressable market is massive and growing. According to Borrell's latest assessment, \$13 billion in advertising is spent by agents, brokerages, homebuilders and property managers. The trends for agent ad budgets show increased migration online and into mobile, which is where, when and how home shoppers prefer to find a home. It is still very early days as the FTC assent to this transaction confirms. Taking the long view, we have just a fraction of the share of revenue available in the market, and we have much to do to grow our share of revenue. Our belief in the primacy of audience and giving power to the people remains unwavering as we begin the next phase of our evolution to become the consumer destination for all things home.

Chad and I will now open up the call to questions about Zillow's Q4 results or the Trulia transaction but won't be providing guidance or updating synergy projections during Q&A.

Operator, we'll open the call now.

Question and Answer

Operator

[Operator Instructions] First question comes from Mark Mahaney from RBC Capital Markets.

Mark S. Mahaney

RBC Capital Markets, LLC, Research Division

Great. I guess 2 questions. One, on the Q4 results. Can you provide some color around the Premier Agent subs? That number came in lighter than we would have thought. It was down year-over-year and sequentially. Is that signs of market maturation? Is that kind of deal distraction and inability to really focus on that metric? Any color on that? And then secondly, will we get Q4 financials on Trulia?

Chad M. Cohen

Chief Financial Officer and Treasurer

Sure. Mark, I'll take those questions. So as we've said consistently in the past, we manage this business to growth in monthly recurring revenue, and that's where the business is focused. And in the quarter, we added \$20 million in monthly recurring revenue, which we're quite happy with. We also saw ARPA grow quite substantially, up 33% year-over-year to \$359, which was quite good. And the trends that we're seeing in our existing agents, it's continuing to penetrate in those existing zip codes but also standardized zip codes, and it's about 50-50 between expansion and penetration. So those are really nice trends that we like to see. And overall, we're happy with the overall growth in our Premier Agent business. It grew 76% year-over-year. In the quarter, our real state subcategory grew 73% year-over-year, and we're on a \$265 million Premier Agent run rate. So overall, we're really happy. We focus on the best-performing agents and making them really successful. I think you'll tend to see some seasonality in the fourth quarter, but we're really happy with the way the business is performing. In terms of the second question, the Trulia team is very focused on getting the K out. We expect to have it out before the end of the month, which is the deadline from the SEC. So it'll be out the next week or 2.

Operator

Our next question comes from John Campbell from Stephens Inc.

John Campbell

Stephens Inc., Research Division

Just first, if you guys can talk a little bit about the overlap or maybe just at high level of how Trulia is going to help on the rental side. And then again, as it relates to rentals, CoStar was out yesterday, and I think they announced a pretty substantial new campaign around its farmers.com site. So does that timing impact your view on the rental spend in '15?

Spencer M. Rascoff

Chief Executive Officer and Director

I'll take that one. So what Trulia brings to Zillow Group in terms of rentals is massive scale of lead volume. Zillow -- the Zillow rental network, which was Zillow HotPads and several other sites, already was, we think, to be the largest rental site on the Web. With the addition of Trulia, it becomes even larger. And what we'll be doing in short order is, of course, integrating listings and advertising products for rentals between the 2 sites. So the same rental listings feeds that appear on Zillow and HotPads will also appear on Trulia, and the same multifamily ad products, be they at a cost per lead or cost per lease or other forms of paid-inclusion ad products will be systematized and unified across the different sites within Zillow Group. And then the same sales team, both inside sales and field sales, will represent Zillow Group, selling across all these 3 different sites, so Zillow, Trulia and HotPads. So Trulia is a game changer in terms of our revenue -- rentals revenue opportunity because of the huge lead volume, rental lead volume, that Trulia provides. In terms of competitive developments in the rental space, we just don't feel an impact from competition particularly on the rentals side of the business. Maybe that's because all the players in this space are still small relative to the size of the market. Maybe it's because we're very large and growing rapidly. I'm not quite sure why, but we haven't -- other than in Investor Relations, we haven't seen any impact from CoStar or any other competitor in the rentals industry.

John Campbell

WWW.SPCAPITALIQ.COM

Stephens Inc., Research Division

Okay, got it. And then I know this is a moving target. But as it stands today, if the ListHub agreement were to end today, how many listings do you guys need to recover? And then if you could provide the amount of direct listings you guys have kind of rolled up over the last several weeks. You've done a great job there. And then just maybe, how many unique listings from the overlap with Trulia would they might be able to provide you guys?

Spencer M. Rascoff

Chief Executive Officer and Director

Yes. When we announced that we were parting ways with News Corp a couple of months ago, we were really freed from the constraints of being reliant on a competitor for listings, a competitor whose incentive was obviously to continue to send Zillow inferior listings in order to advertise that their own website had higher-quality listings. So that was a liberating moment. And we, of course, spent the last several months going -- getting direct listing feeds from MLS after MLS. 2 of the 3 largest MLSs in the country have already decided to send Zillow listings feeds. We have dozens more on -- in the deal pipeline that will be announced over the next couple of months. So I'm very pleased with our progress in this area. As was reported by industry news yesterday, Errol Samuelson, who's our Chief Industry Development Officer and a former President of REALTOR.com who has been sidelined for almost a year because of a lawsuit by News Corp, Errol will be back to work in just a couple of weeks and he heads up this MLS team. So I'm feeling good going into the next couple of months as we see more and more MLSs choosing to send listings feeds. Trulia has 125 listings feeds direct from MLSs. They've been at this for about 1 year longer than Zillow. And so the addition of Trulia's audience scale and the momentum that Trulia has in terms of acquiring these listings feeds bodes very well for our MLS Direct initiative. It is rapidly becoming accepted in the industry that it -- if one chooses to send a listings feed to News Corp, which powers REALTOR.com, you also send a listings feed to Zillow Group, which powers Zillow, Trulia, HotPads and other sites. It really makes no sense to send a feed to News Corp and not to Zillow Group given Zillow Group's significantly larger audience scale and other benefits of syndication through Zillow Group. So that's become widely understood just in the last couple of months. And you'll see more and more MLSs really almost every week getting onboard.

John Campbell

Stephens Inc., Research Division

Okay, great. And are you guys able to provide -- I know you probably can't pinpoint it exactly. But just as a percent of total listings, how many do you guys need to recover?

Spencer M. Rascoff

Chief Executive Officer and Director

We can't pinpoint it exactly. It's a metric that I look at every day and the team of about a dozen people that are pursuing these MLS feeds and broker feeds we look at every day. It's not something that we share with investors, but it is something I'm feeling comfortable with going into the spring.

John Campbell

Stephens Inc., Research Division

Okay, great. And then just one last question on 4Q. The tech and development spend was a little bit higher. Is -- was that an issue? Is, I mean, is that capitalization? Is that some onetime costs that won't recur? Any color there?

Chad M. Cohen

Chief Financial Officer and Treasurer

Yes, the -- a little bit of color is just the cap on interest rates in the quarter came in a little lighter than we had expected as well. And so you're going to just see more dollars drop into that category in the fourth quarter. But nothing really unusual, just a little bit lighter on the cap on interest rates.

Operator

Our next question comes from Ron Josey from JMP Securities.

Ronald V. Josey

JMP Securities LLC, Research Division

So 2, please. First, on just overall impressions on load factors and maybe a higher-level question. There's a lot of discussion out there in terms of selling overall inventory available. And I'm wondering, Spencer, if you can talk -- help us understand better about how systemwide sales is relative to availability. I think Zillow typically overdelivers on impression as traffic continues to grow. So I'm trying to figure out what that overdelivery is if possible. Maybe said another way, any updated thoughts in opening up more inventory to sell to current Premier Agents and, of course, realizing the impacts on the model that happened in 2Q? And then the next question, a derivation of that, is just wondering if you're back to normal fee following the 2Q pull-forward of inventory.

Spencer M. Rascoff

Chief Executive Officer and Director

Thanks, Ron. So a couple of things to note on the agent side of the business now that the Zillow-Trulia deal is behind us. Firstly, investors should understand that Trulia has been on a share of voice impression model, or still is on a share voice impression model. And investors who have been watching these stocks for a couple of years will remember that Zillow used to be on that model up until about 2 to maybe 3 years ago. And so later this year, when the ad -- agent ad impression product from Zillow Group starts serving on both Zillow and Trulia, Trulia will transition from -- at that point from the share of voice model to the fixed impression model that Zillow has had for the last couple of years. That alleviates a lot of impression inventory constraint issues because, of course, as traffic grows and as lead volume grows, Zillow Group will have the flexibility to open up new impressions available. And Trulia has been really constrained by this for the last more than 1 year. The other thing to note is -- in particular on the Zillow side, Zillow has been constrained by the FTC review process over the last 8 months. We have not been able to run our business with the same flexibility and latitude that we historically had with regard to everyday decisions like impression counts, given zip codes and other matters. And so now we can start running the business with greater flexibility, and that bodes well for our agent business as well.

Chad M. Cohen

Chief Financial Officer and Treasurer

Yes, just to pile on the question. So with respect to your sort of question on inventory, Ron, we continue to release inventory as we see opportunities present themselves. Traffic in the fourth quarter was 41%. And alongside that, you were seeing more contacts, more paid views and more consumer engagement. So we continue to release inventory from time to time as opportunities present themselves. It's certainly nonlinear, so there's no great way to sort of project it. But just know that the -- when there are opportunities, we do release some inventory, and that results in future revenue opportunities for us. And that -- there is really nothing in particular in the quarter that was unusual, I would say, relative to the dynamic of the second quarter.

Spencer M. Rascoff

Chief Executive Officer and Director

Ron, let me also add one other thing. And it ties back to Mark Mahaney's question about ARPA and the sub count from earlier in the call. We've made significant progress on making sure that agents who value the impressions and leads, those are -- yes, we've made significant -- so making sure those are the types of agents that receive the impressions and leads, which is another way of saying that I believe the conversion rate from a lead to a transaction has grown perhaps significantly over the last year or 2. It's very hard to know because we don't have a clean read on what the conversion rate is for a Premier Agent from an -- from a lead to a deal closing. But we do know that many more of our impressions are going to top producing agents who have better lead conversion programs and are using more software through our Tech Connect partnership with over 40 CRMs around the industry. As a result of that, we have CPM opportunity on the pricing side because the leads are more highly valued because they're converting at a higher rate. So your question was focused around impression availability, but I -- to me that question immediately ties back to the CPM question, which is directly related to the lead conversion question, which comes back to Mark's question about ARPA and sub count growth. And Mark said something like are -- do you feel like you're reaching market maturation. And I wrote that down because I couldn't more vehemently disagree with the assertion that we're reaching market maturation in terms of our agent ad business. We see nothing of the sort. It's still very, very early relative to this -- the opportunity in the agent business, and our efforts to improve lead conversion have benefited us significantly.

Operator

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Our next question comes from Chris Merwin from Barclays.

Christopher Merwin

Barclays Capital, Research Division

So you talked about the elimination of, I think, 350 positions that were mostly in sales. Are you able to say what the cost savings are attributable to that? Or for [indiscernible], how much of the \$100 million without obviously updating that aggregate figure but just curious the size of the impact from those reductions? And then, Spencer, if you wouldn't mind just talking about the going -- the go-forward marketing strategy for the combined company. Obviously, you have 2 brands here that you're going to be maintaining. How do you think about investing in both of those brands? And is it still fair to say that you see savings on the marketing side given that you may not have to invest as much in each of them individually now that you're no longer competing with each other?

Chad M. Cohen

Chief Financial Officer and Treasurer

It's Chad. I'll take the first part of your question. So we -- we're not quantifying that number on the call today. At the time of the announcement a few months ago, we expected some really significant cost synergies, and I think what you're seeing today are some fairly aggressive steps that the company is taking to rightsize both companies as one enterprise. So 280 employees more like yesterday. We have plans to let go another 70 employees in about 1 quarter from now. We think that's pretty aggressive. And we're excited about the long term with the remaining staff and having the right-sized company to give us top operating leverage that we believe we can achieve as one unit.

Spencer M. Rascoff

Chief Executive Officer and Director

Just to clarify on the second step of the layoffs, those affected employees have been notified. And it's just a couple of months' transition for their roles because their specific roles require a longer transition period. So those are already in motion. I'm glad, Chris, that you asked about the marketing strategy because it directly ties to the synergy question. A lot of the synergies that we discussed back in July were really cost avoidances, not just cost reductions, and we said at the time that some of that will be tied to advertising. So let me describe the combined company's advertising strategy across Zillow Group. In 2015, we're advertising all 4 of our consumer brands: Zillow, Trulia, StreetEasy and HotPads. We are advertising Zillow and Trulia quite significantly. Zillow, we're spending more in 2015 advertising than we did in 2014 across the Zillow brand. We're not announcing yet what we're doing on the Trulia side, but we are absolutely advertising Trulia in 2015. And so the strategy, by all means, is to continue to grow audience across all 4 brands through product development and advertising and -- in order to make sure that Zillow Group's brand has the largest consumer audience.

Operator

Our next question comes from Lloyd Walmsley from Deutsche Bank.

Lloyd Walmsley

Deutsche Bank AG, Research Division

A couple of questions, if I can. It seems, in some respects, like the competitive environment is actually getting more intense with News Corp investing more heavily in Move and then you've got the CoStar investment in their apartments business, not to mention chatter about industry initiatives. How do you guys think about the competitive environment broadly? And then I think you had said on the call when you acquired Trulia that some of the advertising spend may have been defensive in nature. Do you feel like this environment is going to cause you guys to continue to have this -- keep your foot on the gas on marketing? And then second, if you look at Market Leader, it was a pretty substantial portion of the Trulia revenue, but it had been underperforming. And you guys have been pretty outspoken about preferring an open approach to software. Is this something you guys intend to keep pursuing? Or is the asset still separate enough to potentially sell it? How do you guys think about that business?

Spencer M. Rascoff

Chief Executive Officer and Director

Thanks, Lloyd. On the competitive environment, there's always been competitors since we started. When we started Zillow 10 years ago, there was a competitor called Rotor.com [ph] that was controlled by the

industry that had a massive and seemingly insurmountable lead and advantage. And out of nowhere, Zillow and Trulia zoomed past it. And so the -- we've always had competition. I think Trulia did incredibly well while it was competing with Zillow. Zillow did incredibly well while it was competing with Trulia. The current competitive environment, you're right, there still is a lot of competition. But I don't think it's any more or less than it has been over the last 10 years. I like our chances. I think we've got great people. I think we've got great assets and we've got great brands and we have got a great running head start. But it's -- we're not resting. You're right, it remains competitive. In terms of Market Leader, the -- there are really 2 parts of Market Leader's business. One is the enterprise software business, where they are the software suite for Realogy and Keller Williams. And the other piece is Market Leader's retail business where they sell lead generation and customer relationship management software to individual real estate agents of all brands from all different type of brokerages. The -- we're going to continue to service Keller Williams and Realogy, and we're going to work with our brokerage partners there to figure out what the best going-forward strategy is for Market Leader vis-à-vis Realogy and Keller Williams. And we're conducting a strategic review on the retail side of the business with a significantly smaller team at Market Leader. So after the layoffs, there are about 125 people in Bellevue and Market Leader now, and now we're going to review how Market Leader fits into Zillow Group's overall strategy.

Operator

Our next question comes from Robert Peck from SunTrust.

Rodney A. Hull

SunTrust Robinson Humphrey, Inc., Research Division

This is Rodney for Bob. Just 2 quick questions sort of related. One, is there a difference -- or there was a difference in philosophy in terms of lead flow between how Zillow and Trulia handle leads. I just wanted any update on sort of how you guys are interpreting that going forward. And then as I think about your Asia review, I think you just passed 1 million in aggregate on the platform, and most of those are obviously all agents, can you talk about an investments you guys are making towards getting better attribution on the site and on the platform?

Spencer M. Rascoff

Chief Executive Officer and Director

Sure. I think what you mean by lead flow philosophy is that historically, Zillow has defaulted to one agent when the consumer is contacting agent. And historically, Trulia has defaulted to more than one agent. We're going to sit out together and look at the data across these 2 different strategies and figure out what makes sense for each of the brands. We are going to integrate the ad products, though, so that the -- eventually, by later this year, when an advertiser or an advertising real estate agent buys media from Zillow Group, those impressions will get served on Zillow and Trulia and other sites. But in terms of this selection of the default check, that's something that we're going to be looking at the data and making decisions together about. In terms of agent reviews, you're right, this has become a very significant mode for Zillow. 1 million reviews of real estate agents by far and the largest repository of user-generated content about real estate agents. It's become almost indefensible for a real estate agent to not control their online reputation on Zillow given how many tens of millions of people look at Zillow to read agent reviews every month. And it's a very important part of the value proposition that Zillow provides real estate agents and that Zillow provides to consumers. That review platform will eventually be shared across both brands so that Zillow Group will benefit from increased reviews that come through the Zillow -- or, sorry, come through the Trulia point of sale. So the rate of new reviews will accelerate as the size of the audience increases. And the value -- to the other side of the network, the value to the real estate agent will also nearly double as their reviews and reputation will be spread across the Trulia brand. In terms of greater attribution for the reviewer, that's something that we've worked pretty hard at trying to strike the right balance between having a low hurdle so as to encourage a lot reviews but a high enough hurdle to prevent and avoid fraud. And I think we struck the right balance. We've been working at this for the last several years. And no review system is foolproof but I think we've struck the right balance on that regard.

Operator

Our next question comes from Tom White from Macquarie.

Thomas Cauthorn White

Macquarie Research

Spencer, you talked about sort of not reaching market maturation. But I guess within the context of subscriber growth slowing, can you maybe just comment a bit about how you think about that trade-off in the Zillow ecosystem longer term in terms of sort of empowering the relatively smaller subsegment of agents against the broader agent addressable market? And then just secondly, can you maybe help us quantify the impact of the lender subsidy program in the quarter and maybe talk about how that has ramped quarterly since it launched?

Spencer M. Rascoff

Chief Executive Officer and Director

Yes, so, I mean, we've talked about this trade-off between sub counts and ARPA really since back on the IPO roadshow almost. And it's -- as Chad mentioned, we manage the business to total Premier Agent revenue, not to sub count or ARPA. In fact, I mean, if we didn't report those 2 metrics, ARPA and sub count, people would be ecstatic with our year-over-year growth of our agent revenue, as they should be and as we are, rather than sort of picking out the number of sub count at each quarter. So every time a salesperson comes into the office, they face a choice: Do they call existing agents and sell more inventory, which raises ARPA? Or do they call brand-new brand agents and try to sell them into the program for the very first time, which raises sub count but lowers ARPA because brand-new agents come in at a lower monthly spend? And the -- it is a lot easier to sell through an existing agent because they already understand the value of the program and they already value the leads and they already know how to convert the leads. It's also frankly better for our users if those extra impressions go to an existing Premier Agent because they're more likely to get better service because their existing agent already knows how to convert a Zillow lead into a transaction. Nonetheless, we do think it's important to continue to grow sub count at least modestly because brand-new agents, brand-new well [ph] agents that are \$5,000 to \$10,000 amount ARPA potential agents are just entering the program each and every month or are just entering the real estate industry each and every month. And so it's important for us to continue grow sub count at least somewhat in order to bring on the next generation of the largest ARPA clients. Most of the initiatives that we've enacted across the sales team and the account management team over the last year or 2 have been focused on growing ARPA at the expense of sub count. And it's worked, and you see that in the data. These include things like Tech Connect, where now we're sending leads directly into most every major CRM, and that benefits the highest-ARPA agents who tend that type of software. We now run a massive number of local events where we train agents on how to convert Zillow leads. We now have a very significant onboarding initiative and account management initiative which coaches agents on how to convert these leads. We've partnered with many major brokerages to do in-office training for top agents to convert these leads. And on and on. And so all of these initiatives have been done very strategically with an eye towards increasing ARPA, which absolutely comes at the expense of sub count. So the way we manage the business is we think how many leads did we generate in Boston in the month of January and how much money did we make from generating all those leads. And more particularly, how many leads do we generate in Boston? And how much commission dollars were created by those leads in Boston? And how much did agents pay us to generate those commissions? The number of subscribers in Boston and the amount that they spend per month is secondary to what's the total commission dollars that we generated in a given city and a given month and what -- well, how much money did we make for having helped generate those commissions. And that's the push/pull between ARPA and sub count that we face. As you can see in the data, we clearly are biased in the favor of ARPA growth over sub count growth. On your question about lender subsidy, Tom, the Premier Agent lender sponsorship program, which we launched at Zillow probably 2 years ago can -- about 1.5 years ago, it continues to be a successful and popular program. Again, in particular among top producing agents who are high-ARPA and tend to have a mortgage lender that partners with them to pay for part of their subscription, we don't break out the percent of revenue that lenders pay. It is something that Trulia launched more recently, I think about 6 months ago, in a smaller scale. And once the ad products were unified later this year across Zillow Group, the lender sponsorship program is absolutely something that we think will benefit Trulia as we unify the ad products across the 2 brands.

Operator

Our next question comes from Aaron Kessler from Raymond James.

Aaron M. Kessler

Raymond James & Associates, Inc., Research Division

A couple of questions. First, I know you're not giving official guidance, but just in revenue classification, any thoughts? Are you -- do you plan on keeping kind of the Zillow revenue classification that you have today? And second, just in terms of the user growth numbers, I know you're not -- I think you took it off the site now. But I think January did about 24% unique growth. I know there are some issues with Google Analytics as well. But the 24%, is that a clean number? And then is that -- if that growth did slow, is that just kind of rule of large numbers?

Chad M. Cohen

Chief Financial Officer and Treasurer

This is Chad. So in terms of revenue classification, yes, the current -- our thoughts are to stick with the current revenue classification. But obviously, we'll have more to discuss on that particular topic in a quarter from now. But yes, we still, I believe, continue to report on the real estate mortgages subcategories. Yes. And we believe -- on the second part of the question, we believe that the traffic numbers are clean numbers for the month.

Aaron M. Kessler

Raymond James & Associates, Inc., Research Division

Okay. I understand. Finally on the Trulia, I believe they were selling both mobile and desktop leads. Any thoughts on that on a go-forward basis? And were they somewhat double-counting the agent numbers? Can you remind us?

Spencer M. Rascoff

Chief Executive Officer and Director

After the Market Leader integration, Trulia stopped reporting a separate sub count number, separate from Market Leader. So I don't -- I can't really comment on how they were accounting for mobile versus desktop Trulia subs. But to answer your question, the -- with a high degree of likelihood, we will probably integrate the ad products in such a way that we'll sell desktop and mobile together, the same way that we do at Zillow. The idea is to have a very simple way for an individual agent to spend a particular amount of money per month with Zillow Group, and Zillow equals Internet for them. It provides them with a website, a CRM, connectivity to other CRMs and and significant lead generation across the top real estate sites on the Internet. And in order to do that, I think desktop and mobile needs to be unified.

I think with that, we'll conclude the call. Thank you, all, for your interest and we will talk to you all soon.

Operator

Ladies and gentlemen, thank you for participating in today's conference. This concludes our program. You may all disconnect. Have a wonderful day.

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